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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,028	03/02/2004	Jay S. Walker	03-018	1255
22927	7590	11/25/2008		
WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905			EXAMINER D'AGOSTINO, PAUL ANTHONY	
			ART UNIT	PAPER NUMBER
			3714	
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			11/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,028

Applicant(s)

WALKER ET AL.

Examiner

Paul A. D'Agostino

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 15 and 33-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 15 and 33-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This responds to Applicant's Appeal Brief filed 03/25/2008. Claim 15 has been amended and Claims 9-14 and 16-32 stand cancelled. Claims 1-8, 15, and 33-43 are now pending in this application.

Response to Amendment

1. Applicant's response to the rejection of Claims 15, 37, 39, and 40-43 under 35 U.S.C. §112, first paragraph is persuasive. Thus, the rejection of Claims 15, 37, 39, and 40-43 is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 1-2, 5-8, and 33-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betmaker.com of record.

Betmaker.com teaches of method for players to make bets on various events. A balance of funds is established for a player (See Betmaker.com, "FAQ player accounts"). A wager amount is determined for a game. For example, there are minimum wager amounts required (See Betmaker.com "about betmaker"). The system determines whether the wager amount is greater than a predetermined amount. For example, the system will not accept bets less than the minimum bet and will only accept bets greater than zero (which can be considered the predetermined amount); therefore, the computer system checks to make sure the bet is greater than the minimum bet amount and zero (See Betmaker.com "FAQ"). This is an obvious feature in computerized betting systems. All computer betting systems run a variety of checks to ensure that a proper amount is being bet, i.e. an amount that is allowed by the betting program.

Therefore a confirmation message is displayed if the wager amount is greater than the predetermined amount. For example, a confirmation message is displayed if the player meets the minimum bet (See Betmaker.com "Buy-wagering") [claims 1, 33, 34]. Conversely, a computer betting system would not display a confirmation message to confirm a bet if the bet is improper or not allowed by the betting program. Consequently, once again it is obvious that the computer betting systems check to make sure a valid bet is placed prior to allowing a player to confirm the bet.

The game comprises a plurality of plays. For example, football and baseball involve plays in game play (See Betmaker.com) [claim 2].

The wager amount required corresponds to a plurality of plays (See Betmaker.com "parlays") [claim 5].

The wager amount required corresponds to a predetermined period of time (See Betmaker.com "singles", "general rules") [claim 6]. For example, the player wagers on a specific time limit for the sporting event.

The confirmation message comprises a confirmation screen (See Betmaker.com "Buy-wagering") [claim 7].

The confirmation screen comprises at least one selectable location (See Betmaker.com "Buy-wagering") [claim 8]. It is inherent to the Betmaker.com system that it includes a computer with a processor and a computer readable medium storing instructions configured to direct a processor to perform the aforementioned method [claims 33, 34].

All on-line betting web sites require a computer, processor and program in order to function. The Betmaker system involves on-line bet placing which requires a computer and software to function. Betmaker.com also discloses that when a player makes a wager, the display shows the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation message includes an indication of the wager amount compared to the balance of funds [claim 36, 42] and equally obvious for a player to know upon inspection the percentage or ratio of his wager to the balance of funds [claim 37, 38, 42].

The predetermined amount corresponds to a predetermined ratio (See Betmaker.com FAQ) [claim 39]. For example, the minimum wager for Internet wagering is \$6. That is a predetermined ratio of 6:1. Therefore, the predetermined ratio is not less than one half [claim 40, 42, 43].

As stated above it is inherent that Betmaker.com includes a processor and a computer readable medium in communication with the processor which stores instructions configured to direct the processor to perform a method (See Betmaker.com) [claim 41].

The system determines a balance available for a player to wager and determines a wager amount required for the game (See Betmaker.com Buy Wagering, FAQ). A confirmation message is displayed every time a valid bet is entered. Therefore, the confirmation message is displayed if the determined ratio is greater than a predetermined ratio which is 1/infinity. Betmaker.com also discloses that when a player makes a wager, the display reads the available

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balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation page clearly indicates the cost to play the game, i.e. amount at risk, and the available balance.

At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to display the cost/wager to play the game as a percentage/ratio of an available balance because Applicant has not disclosed that the display of a percentage/ratio provides an advantage, is used for a particular purpose, or solves a stated problem [claim 35, 36, 38, 42].

Betmaker.com lacks in specifically stating that the confirmation page has the presentation of a ratio of the amount wagered to amount bet, instead Betmaker.com provides the information on a plurality of confirmation pages e.g., the place bet screen and what is referred to above as the receipt which shows the amount available to the amount bet.

One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the display of the available balance and the amount of money at risk because the same information is being communicated to the player in order for them to confirm the bet.

Therefore, it would have been an obvious matter of design choice to modify Betmaker.com to obtain the invention as claimed.

It is further noted that to have the predetermined ratio be not less than one half would also have been obvious to a person of ordinary skill in the art. By

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displaying a confirmation message only when a player is betting a significant portion of their available balance ensures that the person actually knows the potential risk of the bet before they place the bet. Once players see how much they are actually wagering, they may reconsider the bet and want to withdrawal it. Consequently, by verifying that a player actually wants to make the bet, the wagering site can escape liability for a player losing a wager.

6. Claims 3, 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betmaker.com in view of Walker, U.S. Patent No. 6,077,163 of record.

Betmaker.com lacks in disclosing that the game comprises a flat rate or a prepaid session. Walker discloses a gaming machine in which the game comprises a flat rate session and a prepaid session (See Walker abstract) [claims 3 & 4].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the users of Betmaker.com prepay for a flat rate session by prepaying or by paying for a flat rate session a player only has to wager once for multiple games and is not burdened with constantly having to wager for other games. For example, it would have been obvious that, a player could wager \$100 to be divided up among 10 games in Betmaker.com.

Betmaker.com also teaches of the player confirming the confirmation information (See Betmaker.com "Buy-wagering"). By having the player confirm the wager, the player makes sure that he has wagered what he wanted to and if

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he accidentally makes a wager, he has a chance to cancel it before he is liable for the wager. Therefore the act of confirming a wager provides additional protection for the player.

Betmaker.com also discloses that when a player makes a wager, the display reads the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation page clearly indicates the cost to play the game, i.e. amount at risk, and the available balance [claim 15] and the confirmation includes an indication of the cost to play the game as a percentage of an available balance (As recited in the rejection of the previous claims "The Betmaker system involves on-line bet placing which requires a computer and software to function. Betmaker.com also discloses that when a player makes a wager, the display shows the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation message includes an indication of the wager amount compared to the balance of funds [claim 36, 42] and equally obvious for a player to know upon inspection the percentage or ratio of his wager to the balance of funds [claim 37, 38, 42].")

At the time the invention was made it would have been an obvious matter of design choice for a person of ordinary skill in the art to display the cost to play the game as a percentage of an available balance because Applicant has not disclosed that the display of a percentage provides an advantage, is used for a particular purpose, or solves a stated problem.

One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the display of the available balance and the amount of money at risk because the same information is being communicated to the player in order for him to confirm the bet.

Therefore, it would have been an obvious matter of design choice to modify Betmaker.com to obtain the invention as specified in claim 15.

Walker discloses a method of receiving a request to initiate play of a game at a gaming machine (See Walker Col. 4 Lines 6-10). The device determines whether to present confirmation information to a player. If confirmation is to be presented to the player, the device determines the confirmation to present and presents it to the player (See Walker Col. 14 Lines 67-68; Col. 15 Lines 1-9). A credit balance associated with the player is decremented and play is initiated (See Walker Col. 15 Lines 19). In determining whether to present the confirmation information to the player, the device determines the cost to play the game and determines whether the cost to play the game is greater than a predetermined cost (See Walker Col. 14 Lines 67-68; Col. 15 Lines 1-9) [Claim 15]. Walker presents this system and method to confirm via a message that the flat rate price has been covered by the deposited funds in order to provide a games "for tournament style play without comprising [sic compromising] the revenue stream of a casino, particularly where the player selects the time and duration of the period, the amount wagered per play, and the particular gaming device played." Col. 2 Lines 40-46.

Response to Arguments

7. Applicant's arguments filed 3/25/2008 have been fully considered but they are not persuasive. Betmaker.com teaches displaying a confirmation message if the wager amount is greater than the predetermined amount where the confirmation page is displayed to the player with a plurality of different details about the terms and conditions of the bet. Additionally Betmaker states that "Online bets are not guaranteed unless the customer receives a confirmation message." Which is bullet 3 on page 6 of the NPL dated (4/4/05). The Examiner notes that "minimum bet" is the smallest amount of money that needs to be wagered in order to constitute a valid, bet. For example, Betmaker.com clearly indicates that \$6 is the minimum Internet bet required in order to have the transaction processed (page 3 bullet 3 of NPL 4/4/05) titled flexibility).

The Examiner notes that it is obvious in on-line wagering systems that a betting website will not process bets that do not meet certain requirements, i.e. some amount of money has been bet (the bet is greater than zero) or the player has bet at least the minimum bet required. This is the same for most websites with a confirmation page where one's purchase is reviewed before one hits pay. Then one receives an additional confirmation message or page called a receipt. Betmaker also provides a receipt as shown in pages 13-15 where the examples show that once a bet is placed an available balance and an amount at risk is shown.

Betmaker.com as outlined above teaches providing a confirmation page with information as to the amount of the bet and the account status. Additionally,

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and for arguments sake only, in a reference not used in the rejection Sarno US Patent 6,024,641 8:20-27 discloses the use of confirmation pages used with an interactive lottery system and specifically that a confirmation page shows a selection display, a time play display, and purchase information and in some preferred embodiments, the numbers and or characters selected by the player can no longer be changed once the player has accessed the confirmation page.

Applicant argues that there is "emphatically no teaching or suggestion that a player must meet a minimum bet in order to facilitate the display of the confirmation page" (Reply Brief, Page 19) and that it is "not inherent that the computer system checks to make sure a valid bet is placed prior to allowing a player to confirm a bet" (Reply Brief, Page 19). Examiner respectfully disagrees. If it is a written policy that a minimum bet must be \$6 it would not be advantageous to build a system that accepts less than the minimum bet and would only be disadvantageous to build a system that does not work or provides errors. The examiner has determined by reading the prior art that if the system only allows for a minimum bet to be made then only a minimum bet may be confirmed and presented on the confirmation page.

With respect to inherency, Applicant's arguments are moot given Examiner now simply posits that Applicant's claimed limitations are obvious in light of the prior art as presented in the claim rejections above.

With respect to the claim limitation that the confirmation message includes an indication of the wager amount compared to the balance of funds the Betmaker.com system involves on-line bet placing which requires a computer

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and software to function. Betmaker.com also discloses that when a player makes a wager, the display reads the available balance left after the bet and the amount of money at risk (See Betmaker.com Examples I & II under Buy Wagering). Therefore, the confirmation message includes an indication of the wager amount compared to the balance of funds.

Lastly, Examiner contends that the art of record renders obvious Applicant's claimed invention for the simple fact that information is presented to a player at quintessential times such that a player is enabled to make rational wagering choices prior to a full commitment of funds. Applicant's invention does nothing more than state the obvious to any calculating player of a wagering game, wary of his budget and luck, in the form of dubious computations on the game display. Thus, for the reasons recited about the rejections of the claims are maintained.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. D'Agostino whose telephone number is (571)270-1992. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 5:00 p.m..

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/
Supervisory Patent Examiner, Art Unit 3714

/Paul A. D'Agostino/
Examiner, Art Unit 3714